

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Cornish Deshazo, Jr. And Ruth Deshazo

Case No. 10-82227

Chapter 13

Social Security No. xxx-xx-2229 and xxx-xx-4600

Address:1307 Haywood Bailey Road, ,Roxboro, NC 27574-

Debtors

OBJECTION TO CLAIM

NOW COME the Debtors above-named, through counsel, pursuant to 11 U.S.C. §502 and Bankruptcy Rule 3007, who respectfully object to the proof of claim filed by the creditor WELLS FARGO BANK and dated December 17, 2010, for the following reasons:

1. The Debtors believe the “pre-petition” arrearage claim in the amount of \$23,021.37 is overstated.
2. The Proof of Claim asserts that Wells Fargo Bank, N.A. is entitled to fees totaling \$4,453.33 for the following described expenses:
 - a. Foreclosure Fees & Expenses: \$4,360.83.
 - b. Inspection fees: \$92.50.
3. Pursuant to N.C. Gen Stat. § 45-91, for a fee to be allowed, Wells Fargo Bank, N.A. must assess the fee within 45 days from the date which the fee was incurred, and must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower’s last known address within 30 days after assessing the fee.
4. Wells Fargo Bank, N.A.’s proof of claim does not specify when the fees were incurred, and does not specify when the fees were assessed.
5. Wells Fargo Bank, N.A.’s proof of claim does not include a copy of the explanatory statement mailed to the borrower at the borrower’s last known address.
6. Wells Fargo Bank, N.A.’s failure to provide notice of the fees charged constitutes a waiver of said fees pursuant to N.C. Gen Stat. § 45-91(3). See *In re Saeed*, No. 10-10303 (Bankr. M.D.N.C., Sept 17, 2010) (2010 WL 3745641). See also *In re Obie*, No. 09-80794, (Bankr. M.D.N.C., Nov. 24, 2009) (2009 WL 4113587).

Because the Debtors contest the amount of the pre-petition arrearage claimed by said creditor in its Proof of Claim filed in this case, pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Debtors are, by separate document

attached herewith, requesting production from said creditor of a payment history and related information.

WHEREFORE, the Debtors pray that the Court enter an Order reducing the pre-petition arrearage claim to the sum of approximately \$13,761.29 and the on-going payment to \$717.68 . Furthermore, in the event that said creditor contests this objection by filing a formal response thereto, the Debtors request that, until such time as the aforementioned payment history is provided, the Court treat any hearing upon this Objection as preliminary, in accordance with the power vested in this Court pursuant to 11 U.S.C. 105(a). Lastly, pursuant to N.C.G.S. § 6-18 & 19, the Debtors pray that the costs of this action be taxed to the Creditor and that the attorney for the Debtors be awarded fees in the amount of \$500.00.

Dated: February 8, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
Edward Boltz
N.C. State Bar No. 23003
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CERTIFICATE OF SERVICE

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on February 8, 2011. I served copies of the foregoing **OBJECTION TO CLAIM** electronically or, when unable, by regular first-class U.S. mail, addressed to the following parties:

WELLS FARGO BANK
Attn: Managing Agent
S/B/M Wells Fargo Mortgage
3476 Stateview Boulevard
Fort Mill, SC 29715-

Sean Corcoran
Attorney for WELLS FARGO BANK
Brock & Scott
5121 Parkway Plaza Drive, Ste 300
Charlotte, NC 28715-

U.S. Bankruptcy Administrator

Richard M. Hutson, II
Chapter 13 Trustee

/s Renee Nolte
Renee Nolte